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SUBJECT: CANADA SEES NEED TO STRENGTHEN MEASURES AGAINST SECURITIES FRAUD

REF: (A) Toronto 372 (B) Toronto 375 (C) Toronto 160

Sensitive but Unclassified - protect accordingly.

¶11. (SBU) SUMMARY: A recent report commissioned by Canada's federal police force (Royal Canadian Mounted Police, or RCMP), and written by former GOC senior financial official and bank regulator Nicholas LePan, criticized the institutions and resources available for fighting white-collar crime in Canada. The report notes that creating a single Canadian securities regulator could facilitate the prosecution of securities offenses, and GOC Finance Minister Jim Flaherty is seizing on this rationale to support his push for a single regulator. The Ontario Securities Commission (OSC), widely criticized for its inability to try and convict white collar criminals in securities fraud cases, supports the LePan report findings. End Summary.

¶12. (SBU) BACKGROUND: A number of financial events over the past decade in Canada have contributed to a perception that this country's measures to control white-collar crime may be inadequate. Key events include the notorious Bre-X mining promotion scandal of the 1990s (the only person brought to trial was acquitted), the recent successful prosecution of former Canadian financier Conrad Black in Chicago (observers opine that Black's case might never even have gone to prosecution in Canada), and Canadian firms' struggle to comply with the United States' Sarbanes-Oxley law on financial accountability because of the resources required for compliance, and Canadian companies' relatively small size compared to their U.S. counterparts.

¶13. (SBU) The GOC created Integrated Market Enforcement Teams (IMETs) in 2003 to increase enforcement, but there have been few visible results. Since coming to office in early 2006, Canada's Conservative Party government has promoted "accountability" and law enforcement as key themes of its policy agenda. In February 2007, the government announced expanded resources for IMETs, and also appointed Nicholas Le Pan, a former Superintendent of Financial Institutions (federal bank regulator) and former senior official in the Department of Finance, to develop a plan to increase the teams' effectiveness. End background.

¶14. (U) LE PAN REPORT: Le Pan's report was made public on December 3 and is available on the internet at http://www.rcmp-grc.gc.ca/imets/report_lepan2_007_e.htm. Following are selected key points made by the author:

-- "IMETs can improve within the current legal framework."
-- "In contrast to the U.S., Canadian legal tradition does not permit prosecutors to be in charge of investigations or participate

in them on a day-to-day basis. "

-- "There appear to be resource challenges in some jurisdictions that can slow down getting to charges and having appropriate prosecution teams in place."

-- "Those being investigated or charged will understandably bring substantial high-quality resources to bear to defend themselves. The Program is 'playing in the big leagues' and needs to act that way."

-- "Expectations of U.S.-style results are unrealistic, given Canada's different legal environment. For example, our lack of ability to compel those not being investigated to provide information, documents and data pre-trial, hampers investigations compared to the U.S. or UK. Also, as an example, charging people in stages in a major investigation, as is done in the U.S., is not feasible in Canada due to rules on full disclosure of the Crown's case to accused."

¶15. (SBU) SINGLE SECURITIES REGULATOR: Canada is unusual among developed countries in placing jurisdiction over securities markets at the sub-federal (provincial) level (reflets). There are continuing efforts to promote a "common" or "single" regulator, based on various models, with varying degrees of resistance from provincial and territorial governments (Ontario, whose securities commission already regulates the vast majority of the market, being the most interested, and Quebec and Alberta being opposed). GOC Finance Minister Jim Flaherty has advocated a single regulator, but the GOC has very few means at its disposal to persuade the provinces - whose leaders are often touchy about federal encroachment - to loosen their grip.

¶16. (U) Le Pan touched on this sensitive issue with the following comment:

"The existence of multiple securities regulators in Canada can make
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achieving consensus on issues difficult and time consuming. For example, it took considerable time to sort out the approach to sharing of information between regulators and the police in Canada and between Canadian authorities and their international partners. It is not fully resolved. Canada did not have a uniform position vis-a-vis its international partners. Different provincial regulators have different interpretations of court decisions which have hampered setting up joint securities intelligence units with the RCMP in some provinces."

¶17. (SBU) FLAHERTY PICKS UP THE LAW ENFORCEMENT THEME: Appearing before the Senate Banking Committee on December 5, Finance Minister Flaherty seized on Le Pan's report to support his arguments for a single or "common" securities regulator. He made several points:

-- Discussions have been moving forward based on a model proposed recently by an eminent persons committee.

-- What's proposed is not a federal regulator, but a common Canadian regulator.

-- While regional opponents often express concern that Ontario and/or Toronto want to dominate them, this model need not be Ontario-oriented or Toronto-oriented. In reality, the status quo is about 85 percent based in Toronto, so regional opponents should remain open-minded about how reform could distribute power differently.

-- Other countries are interested in considering mutual recognition arrangements in this sector (Flaherty cited the USA, Australia and New Zealand), but mutual recognition cannot advance until Canada has a single, common securities market regulator.

¶18. (SBU) ONTARIO SECURITIES COMMISSION (OSC): The OSC, which has been criticized for its inability to try and convict white collar criminals in securities fraud cases, supports LePan's findings. Along with Minister Flaherty, the OSC has been calling for establishment of a common Canadian securities regulator (ref A), in large part to improve securities law enforcement in Canada. An

interprovincial law enforcement taskforce, the Securities Fraud Enforcement Working Group, led by OSC Chairman and CEO David Wilson, and Quebec Justice officials, with RCMP participation, is working to beef up securities law enforcement across Canada, and to address criticism of Canada's inability to successfully prosecute insider trading cases (ref B).

19. (SBU) SECURITIES FRAUD ENFORCEMENT WORKING GROUP: In November, this working group presented its finding to the federal, provincial and territorial justice ministers in Winnipeg. "What we say ... to the ministers is, the system is working," Wilson said in advance of the report's submission. "Can it be better? Yes. Should we try to make it better? Yes. That's the reality as we see it." The next step is analysis of the recommendations and their implementation. The group's key recommendation to improve securities law enforcement across Canada is "to improve cooperation, coordination and consistency across jurisdictions," said Wilson at the Dialogue with the OSC 2007 on November 27 in Toronto. Wilson also highlighted a Canada-wide shortage of skilled prosecutors whose focus is on white collar crime, and Canada's complex legal framework that tends to constrain information-sharing -- issues that were raised in the Le Pan report.

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